# In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1156

GLENN W. HALL, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On May 12, 1969, petitioner was convicted by a jury in the United States District Court for the Northern District of New York for bank robbery in violation of 18 U.S.C. 2113(a). He was sentenced to imprisonment for ten years and fined $5,000. The court of appeals affirmed in a comprehensive opinion (Pet. App. 12–25).

The sole issue discussed in the petition is whether petitioner was subjected to "custodial interrogation", prior to receipt of the warnings of his rights as required by *Miranda* v. *Arizona*, 384 U.S. 436.

1. The evidence is recounted in some detail in the opinion of the court of appeals (Pet. App. 13–16).



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It showed that on December 12, 1968, at 7:55 a.m., the head teller of the Cicero Branch of the Merchants Bank of Syracuse, New York, parked her automobile at the rear of the bank. As she approached the rear door of the bank, a man wearing a stocking mask and carrying a rifle directed her into the bank. After herding her and three other employees into the bank vault, he escaped with $37,872.44; the robber also took the keys to the head teller's automobile (R. 17–32, 44).[1] Shortly before the robbery, at about 7:45 a.m. Miss Barbara Costick was driving her brother to work at the bowling alley adjacent to the bank. Both noted a red or maroon car parked in that lot which appeared to Miss Costick to be similar to one she had seen there the day before (R. 94, 112, 137).

As Miss Costick was driving out of the lot, the male occupant of the car seemed to shield his face.[2] This prompted her to look at the license plate on the car, and write down the license number (R. 95, 105–107). Later investigation suggested that this automobile had been driven by the robber (Pet. App. 14). A registration check showed that the license number noted by Miss Costick had been issued to Employers insurance company for a 1967 red Chevrolet. Petitioner Hall, who was originally employed by the company in Syracuse, New York, and was transferred to Buffalo,

[1] This automobile was later found parked in a bowling alley parking lot located approximately 100 feet from the bank parking lot (R. 18, 33).

[2] She noted that he was wearing a gray hat and topcoat—a description tallying with the attire of the robber as provided by the head teller (Pet. App. 14).

New York, in April as a sales trainee, had been assigned the car by the company (R. 276–277).

Armed with this information, at 4:22 p.m. on the afternoon of the robbery, Agent Schaller and two other FBI agents arrived at petitioner's first floor apartment located in a multiple dwelling in North Tonawanda, New York. Schaller, the spokesman, testified that they introduced themselves and asked Hall if they could come in and talk to him. According to Schaller, Hall welcomed them into the living room of his one-bedroom apartment (R. 172–174). It was explained to Hall that a bank near Syracuse, New York, had been robbed that morning at 8:00 a.m. and that an automobile fitting Hall's assigned company vehicle in description and bearing the same plate number was reported to have been observed in an adjacent parking lot the morning before the robbery and at about the time of the bank robbery. Therefore, explained Schaller, he would like to talk to the petitioner about his activities commencing on Monday, December 9, 1968 (R. 171–175, 311–312). Hall consented to the interview. No warning as to rights was given petitioner at this time.

For the next 17 minutes, petitioner recounted his activities during December 9 through 12 (R. 190, 312–315). Petitioner pertinently stated that at about midnight of December 11, he parked his car in the common driveway of his residence behind the automobile belonging to Mr. Schmidt, a neighbor. Petitioner pointed out that since Schmidt had to get his car out of the driveway very early in the morning, petitioner,

long before this, had given Schmidt a set of keys to move petitioner's car which was usually parked behind Schmidt's car. Agent Schaller requested permission to search the company car and petitioner's apartment. He explained to Hall that the agents had no search warrant and that Hall could refuse to allow the search. Petitioner said that he understood his rights and he consented, signing a waiver and consent at 4:47 p.m. (R. 190, 316–318). During the search, which proved fruitless, the interview was discontinued for some 14 minutes. Schmidt, the neighbor, was interviewed during that time, and he denied having moved Hall's car on the morning of the robbery.[3]

Resuming the interview, Agent Schaller told Hall what Schmidt had said and then fully advised him of his rights as required by *Miranda* v. *Arizona,* 384 U.S. 436. Hall stated that he understood those rights and that he desired to waive them and continue with the interview. After reading a standard Bureau waiver form as requested, Hall signed it at 5:07 p.m. (R. 257, 318–319).[4]

The interview was then continued and petitioner gave conflicting accounts of his activities (see R. 323–329, see also R. 374). The interview was concluded at 7:42 that evening (R. 214); however, Schaller and another agent returned later to ask if they could take

[3] At the trial, Schmidt testified that when he arose at 6:30 a.m. on December 12, 1968, Hall's car was not in the common driveway nor on the street (R. 355).

[4] Hall did not testify in his own defense; however, in *voire dire* testimony on a motion to suppress, he acknowledged his signature on the waivers and admitted that he had "examined" the forms (R. 257).

with them an antique rifle belonging to the petitioner, which was similar to one used in the robbery. Petitioner said he would like to talk to his attorney about it and he asked the agents to leave while he did so. They complied with his request, Schaller talked with the attorney, explained the FBI's interest in the whole matter, and then gave the agents permission to take the rifle (R. 330–331). Petitioner surrendered himself to the FBI the following day.

2. After a thorough analysis of the problem of when police questioning constitutes "custodial interrogation" for the purpose of the *Miranda* warnings, the court below—and properly we submit—determined that the test is an objective one (Pet. App. 17–20). Applying this objective standard to questioning at a suspect's home, the court of appeals deemed the crucial considerations, in the absence of an actual arrest, to be whether something is "said or done by the authorities, either in their manner of approach or in the tone or extent of their questioning, which indicates that they would not have heeded a request to depart or to allow the suspect to do so" (Pet. App. 21; see also Pet. App. 22–23).[5] For the reasons stated in the court's

[5] We espoused a similar objective standard in our brief in opposition in *Chavez-Martinez* v. *United States*, No. 190 Misc., this Term, pp. 8–9, certiorari denied, 396 U.S. 858.

We also set forth similar views in our petition for a writ of certiorari in *United States* v. *Agius*, presently pending, No. 974, this Term, which raises the different issue of whether it was proper in the circumstances of that case to postpone giving the portion of the warnings regarding the right to appointed counsel until after the defendant was actually placed under arrest. We are providing counsel with copies of our briefs in *Chavez-Martinez* and *Agius*.

opinion the questioning in this case prior to the *Miranda* warnings was non-custodial under this standard (see Pet. App. 23). We rely upon that comprehensive opinion in urging that the petition for a writ of certiorari be denied.[6]

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*

MARCH 1970.

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[6] The petition does not argue, but seeks to preserve, the issue of whether petitioner knowingly and voluntarily signed the waiver forms after being given the *Miranda* warnings (Pet. 2, 11). As the court of appeals pointed out, there is no basis for questioning the trial court's findings that petitioner signed the forms freely and voluntarily, with full knowledge of his rights (Pet. App. 23–24).

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